

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10241 OF 2004

The Secretary Rayat Petitioners
Shikshan Sanstha & Others

Vs.

Shri Sunil Panjahari Lage Respondents
and others.

Mr. Macchindra Deshmukh h/f Milind Deshmukh for
the Petitioners.

Mr. P.N. Joshi for Respondent NO. 1.
Mr. Umesh Mankapur for Respondent No. 3.

CORAM : A.P. DESHPANDE, J.,
DATE : 7TH MARCH, 2007

P.C.

1) Rule made returnable forthwith by consent
of the parties.

2) By this petition, School management has
questioned the legality and validity of an order
passed by the School Tribunal setting aside the
order of termination and granting reinstatement
with full backwages to the Respondents.

3) It is undisputed that the respondent no. 1
was appointed as Hostel Superintendent in the year

1992-1993 and was also continued in service in academic session 1993-1994. It is yet again an undisputed fact that by an order dated 29/4/1994, the respondent no. 1 was appointed substantively as Hostel Superintendent on probation for a period of two years and the respondent no. 1 has successfully completed the probation period on 28/4/1996. Thus at the relevant point of time, the respondent no. 1 was a permanent employee working under the petitioner as an Hostel Superintendent. On 26/6/1996, the news was published in a local daily newspaper that the respondent has committed rape on a girl. Acting on the said newspaper report and arrest of the Respondent no. 1 by Police u/s 376 of the Indian Penal Code, the petitioner has straightaway issued an order of termination dated 3/7/1996 seeking to terminate the respondent no. 1 w.e.f. 4/7/1996. It is an admitted position that the penal order of dismissal was issued against respondent no. 1, who is permanent employee, without holding any enquiry whatsoever.

4) In this fact situation, the Tribunal has held that the petitioner could not have terminated the Respondent no. 1 from service without holding any enquiry. The Tribunal has also taken into

consideration the fact that the respondent no. 1 herein came to be acquitted by the Sessions Court.

5) A confirmed employee can be punished for committing an act of misconduct. The respondent no. 1 was alleged to have committed a major misconduct and an enquiry was necessary to proceed the issuance of order of punishment. The respondent no. 1 stands projected by virtue of provisions of Section 4(6) of the Act, which lays down :

"No employee of a private school shall be suspended, dismissed or removed or his services shall not be reduced in rank, by the management, except in accordance with the provisions of this Act and the rules made in that behalf".

6) No provision of the Act and Rules permits dismissal of a confirmed employee without holding any enquiry. Respondent no. 1 in the present case has been terminated solely on the basis of the newspaper report, which goes to attribute commission of offence by the Respondent no. 1 under Section 376 of the Indian Penal Code.

7) Perused the order passed by the Tribunal. It is crystal clear that the dismissal of the respondent no. 1 from the service is in breach of principles of natural justice and without affording any opportunity of being heard to the respondent no. 1. This takes me to the other issue involved in the petition and the same pertains to the direction in regard to the payment of full backwages. The Tribunal has granted full backwages to the respondent no.1. However, the learned counsel for respondent no. 1, on instructions from respondent no.. 1 gives up claim for backwages to the extent of 50 percent. Hence, the order passed by the School Tribunal stands modified to the extent of reducing the backwages payable by the petitioner to the respondent no. 1 from 100 percent to 50 percent.

8) Writ petition stands dismissed, with the above modification.

(A.P. DESHPANDE, J.)